

**AN ORDINANCE AMENDING THE STORMWATER PERFORMANCE STANDARDS
FOR DEVELOPMENT, DURHAM CITY CODE CHAPTER 70, ARTICLE X,
SECTIONS 70-736 THROUGH 70-749**

WHEREAS the City Council of the City of Durham finds that:

The health, safety and general welfare and convenience of the public will be furthered through:

- 1) Protecting receiving waters impacted by stormwater runoff discharged from development within the City of Durham through maintaining performance standards for total suspended solids, nitrogen, phosphorus, and bacteria for such development;
- 2) Complying with the City of Durham's municipal stormwater National Pollutant Discharge Elimination System permit, issued under the authority of Section 402(p) of the Clean Water Act and implementing regulations at 40 CFR Part 122.26 *et seq.*;
- 3) Complying with the General Statutes of North Carolina, including but not limited to Article 4A 113A-70 *et seq.* and with implementing regulations for such state statutes, including but not limited to the statutes and regulations implementing nutrient management requirements in Neuse, Falls, and Jordan Basins;
- 4) Limiting potential flooding of downstream properties and protecting streams and other waterways from erosion by ensuring that development manages the increases in peak flows that result from changes in land cover;

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Durham that:

SECTION 1. Existing Sections 70-736 through 70-741 are replaced and amended as follows:

“Sec. 70-736. Purpose and definitions.

(a) *Purpose.* The purpose of Article X is to further the health, safety and general welfare and convenience of the public through:

(1) Protecting receiving waters impacted by stormwater runoff discharged from development within the City of Durham through maintaining performance standards for total suspended solids, nitrogen, phosphorus, and bacteria for such development;

(2) Complying with the City of Durham’s municipal stormwater National Pollutant Discharge Elimination System permit, issued under the authority of Section 402(p) of the Clean Water Act and implementing regulations at 40 CFR Part 122.26 *et seq.*;

(3) Complying with the various General Statutes of North Carolina including but not limited to Article 4A, GS 113A-70 *et seq.* and implementing regulations for such state statutes, including but not limited to the statutes and regulations implementing nutrient management requirements in Neuse, Falls, and Jordan basins;

(4) Limiting potential flooding of downstream properties and protecting streams and other waterways from erosion by ensuring that development manages the increases in peak flows that result from changes in land cover;

(b) *Definitions.* Within this Article, the following terms and phrases, regardless of capitalization, shall have the meanings set forth below:

Baseline Date or Applicable Baseline Date means the following dates for the basins indicated:

| | |
|-------------------|---------------|
| Jordan Basin | Dec. 31, 2001 |
| Falls Basin | Dec. 31, 2006 |
| Lower Neuse Basin | March 9, 2001 |

City Stormwater Standards means written standards related to Stormwater adopted by the Department of Public Works. They include but are not limited to the Reference Guide for Development and Reference Guide for Development/Stormwater; other written and adopted specifications for the design, construction, maintenance, and operation of Stormwater Control Measures or Stormwater Conveyances; and all state standards related to stormwater or state approved alternatives to such standards that have been adopted by the City’s Department of Public Works. The City shall submit to DWQ for approval all technical standards that require approval

Common Plan of Development means staged or coordinated Development pursuant to an approved plan such as a development plan or site plan whether or not by the same owner, or successive improvements over a period of years initiated by the owner(s) of and conducted on a

parcel or contiguous parcels of land for the benefit of such parcel(s). Factors to be considered in determining whether a Common Plan of Development exists include but are not limited to: ownership; scope, content, and history of approved plans; other information regarding the development such as contracts, advertisements, or marketing materials; equitable factors; and common or joint use of infrastructure such as roads or utilities.

Department means the Department of Public Works of the City of Durham.

Development means Land Disturbance which increases impervious surface on a property, or alters its location, or results in an increase in runoff from a property or a decrease in infiltration of precipitation into the soil. It includes both existing development and new development. It does not include agriculture, mining, or forestry activities.

Director means the Director of the Public Works Department of the City of Durham, or such person(s) as designated in writing by the Director to perform all or a portion of the functions set forth in this Article.

Division of Water Quality or DWQ means the Division within the North Carolina Department of the Environment and Natural Resources (NC DENR).

Downtown Area means the Downtown Tier, Compact Neighborhoods, and Suburban Transit Zones as shown on the Durham Comprehensive Land Use Plan most recently approved by the Durham City Council.

Existing Development means Development that, prior to the effective date of this ordinance has either been lawfully constructed, or has established a vested right under North Carolina law to construct a proposed project, or portion thereof. With regard to application of this ordinance, a vested right will be recognized as follows:

a) for Development that does not require a state permit, a vested right shall exist for any portion of a Development that has an approved or a completed application for a site plan or subdivision plat covering that portion, or in the event a site plan or subdivision plat is not required, a building permit or a construction drawing for that portion of the Development. An approved development plan does not accord vested rights in the absence of an approved or completed application for the above-described plans or permits. A “completed application” is one that meets all application requirements, including payment of all required fees and submission of all required information, prior to the effective date of this ordinance. A vested right shall expire if the validity of an approved or completed application or approval is not continuously maintained as otherwise required under the Unified Development Ordinance or City Code;

b) for Development that requires a state permit, vested rights shall be recognized if the project meets all the requirements of a) above, and additionally has received necessary state permits required for the use or for construction.

Falls Basin means the area that drains to the Falls Reservoir as determined by the Durham Planning Department.

Impervious Surface means a surface that because of its composition and/or its use impedes the natural infiltration of water. It includes but is not limited to buildings, roofs, solid decks, driveways, parking areas, patios, sidewalks, and compacted gravel areas. It does not include areas that are part of permitted stormwater controls or the open surface water such as swimming pools.

Jordan Basin means the area that drains to Jordan Lake as determined by the Durham Planning Department.

Land Disturbance means a change in the natural cover or topography of land that may result in sedimentation, and includes but is not limited to grubbing, stump removal, removal of topsoil, coarse or fine grading, and disturbance to the subgrade.

Limited Residential means single family and duplex residential and recreational development.

Lower Neuse Basin means the area that drains to the Neuse River but not to the Falls Basin as determined by the Durham Planning Department, which area is generally shown on a map maintained by such department.

Multifamily and Other Development means development not included in Limited Residential, and includes but is not limited to multifamily and townhomes, and office, industrial, institutional (including local government institutional), and commercial development.

New Development means Development that does not qualify as “Existing Development.”

Redevelopment means Development on a site where structures or impervious surface already exists. It is a category of new development.

Stormwater Control Measure, or SCM, means a device or practice that is designed to trap, settle out, filter, or otherwise reduce pollutants from stormwater runoff, and/or to alter or reduce runoff velocity, amount, timing, or other stormwater characteristics. The term includes all measures formerly known as “best management practices” or “BMPs”. Such measures include but are not limited to stormwater detention facilities, constructed wetlands, vegetative areas, filter strips, buffers, and vegetated swales, and appurtenant drainage facilities.

Stormwater Conveyance means a physical feature, including constructed devices, that conveys stormwater. A conveyance may also serve as a Stormwater Control Measure.

Stormwater Facilities means Stormwater Control Measures and Stormwater Conveyances.

Stormwater Pollutant or Pollutant means nutrients (nitrogen and phosphorus), bacteria, total suspended solids, and any other substance that can be transported via stormwater and that is identified in this Article or City Stormwater Standards as requiring regulation.

Sec. 70-737 General; prior requirements; additional standards; interpretations.

(a) *Applicability.* This Article contains requirements for the control of Stormwater Pollutants and the management of peak flows from stormwater discharges from Development in the City of Durham. All Development shall be subject to the requirements of this Article unless specifically exempted.

(b) *Approval contingent upon compliance.* No site plan, preliminary or final subdivision plat, construction drawing for a street or for utilities, or utility permit shall be approved until the applicant has submitted information required by the City Stormwater Standards sufficient to determine compliance with this Article, and review for compliance has been conducted.

(c) *Prior requirements, violations continue.* Prior stormwater requirements that have been superseded by the requirements of this Article shall continue to apply to Existing Development approved and/or constructed under such prior requirements, in the event that the requirements of this Article do not apply. Existing Development, or portions thereof, that is not required to comply with this Article must continue to manage Stormwater Pollutants and peak flow in accordance with the stormwater requirements appearing on approved plans for the development and the requirements in effect when such plans were approved. Violations of superseded stormwater requirements shall continue as violations and be subject to enforcement under this Article unless this Article explicitly allows the Development or action that constitutes the violation.

(d) *City Stormwater Standards.* The Department of Public Works is authorized to promulgate technical standards for use in the administration of this Article, which standards may be amended from time to time. Technical standards may include but are not limited to requirements for design, construction, performance, financial security, review, and professional certification of stormwater facilities. City Stormwater Standards are considered requirements of this Article. They shall be in writing, and approved and signed by the Director, and shall be maintained in the City's Reference Guide for Development or in other written documents. If such standards conflict with technical standards that have been adopted pursuant to other portions of the City Code, the Director shall be authorized to resolve such conflicts. Any such resolution shall be consistent with the requirements of this Article. The City shall submit to DWQ for approval all technical standards that require approval.

(e) *Maps.* The watershed maps for the Falls Basin, the Jordan Basin, and the Lower Neuse Basin maintained by the Durham City County Planning Department, as supplemented by particular drainage information that may be required pursuant to City Stormwater Standards or the Unified Development Ordinance, shall be used to determine the drainage basin in which a property is located and other determinations regarding drainage.

(f) *Final decisions/interpretations.* The Director shall be authorized to render all interpretations of, and final decisions under, this Article. No interpretation shall be binding unless it is in writing and signed by the Director.

(g) *Requirements Supplementary; Conflict.* The requirements in this Article supplement other statutory, regulatory, and contractual requirements including, but not limited to, requirements for buffers, water protection (watershed) overlays, and controls for sedimentation and erosion that are contained in the Unified Development Ordinance. In the event of conflict between the requirements of this Article and such other requirements, the stricter of the requirements shall control. In addition, this Article does not prohibit establishing stricter requirements in authorizations or agreements for particular projects, including but not limited to committed elements in development plan rezonings, the terms of utility extension agreements, or recorded maintenance agreements regarding individual facilities.

(h) *Fees.* The City is authorized to charge fees to recoup all estimated direct and indirect costs of administering this Article, and such fees shall be reviewed and approved on a periodic basis by the Durham City Council.

(i) *Severability.* If any portion of this Article is determined to be invalid by a court of competent jurisdiction, such determination shall not affect or invalidate the remaining portions of this Article.

Sec. 70-738. Peak runoff control requirements.

(a) *Purpose.* The purpose of this section 70-738 is to ensure that the increases in volume, velocity, and peak flow of stormwater discharges from Development are addressed, in order to mitigate the impacts on downstream properties and receiving waters. All Development, including Development that may be exempt from pollutant reduction requirements set forth in remaining sections of this Article, is subject to the requirements of this section unless exempted in (b) below.

(b) *Applicability; calculation of prior impervious area.* This Subsection 70-738 applies to the following Development, assessed in comparison to pre-development prior impervious conditions as defined in (1) and (2) below: (i) relocation of existing impervious area on a Multifamily and Other lot; (ii) increase in impervious area on any lot subject to limitations on impervious area in an approved plat or plan for reasons such as watershed protection or stormwater control measure requirements; (iii) increase of more than 200 square feet in impervious area on a Multifamily and Other lot; (iv) increase of more than 2000 square feet of impervious area on a Limited Residential lot. For purposes of calculating these thresholds, subject Development that is part of a Common Plan of Development shall be assessed with other portions of such common plan that have not previously complied with peak flow requirements.

(1) For purposes of applying peak flow requirements for the 2 and 10 year storms, the land cover (including type and location) existing as of April 23, 1997 shall be considered the “pre-development conditions”;

(2) For purposes of applying the peak flow requirement for the 1 year storm, the land cover (including type and location) that existed as of March 9, 2001 for land in the Falls Basin and Lower Neuse Basin, and as of March 17, 2009 for land in the Jordan Basin shall be considered the “pre-development conditions”;

(c) *Requirements.*

(1) *Stormwater impact analysis.* Development that is not exempt under (b) above shall submit a Stormwater Impact Analysis or approved alternative to such analysis that complies with City Stormwater Standards as part of the application for site plan or subdivision plat approval, or if such is not required, as part of submittals for construction drawings or utility permit approval. Calculations shall be made in conformance with City Stormwater Standards. No subdivision plats, site plans, utility permits, or construction drawings shall be approved in the absence of a determination by the Stormwater Division that required submissions have been made and approved.

(2) *One year storm.* Development that increases the peak runoff rate from the 1-year storm from pre-development conditions shall provide stormwater management facilities in accordance with City Stormwater Standards such that there is no net increase in peak runoff rate.

(3) *Two and ten year storms.* Development that increases the peak runoff rate from either the 2-year or the 10-year storm from predevelopment conditions may be required to provide stormwater management facilities to address the impact, as determined in accordance with City Stormwater Standards.

(4) *Other design storms.* Development that increases the peak runoff from other design storms such as the 100-year storm may be required to install stormwater management facilities to address the impact, as determined in accordance with City Stormwater Standards.

Sec. 70-739. Stormwater Pollutant standards; exemptions.

Sections 70-739 through 70-741 set forth requirements for Stormwater Pollutants, which include nitrogen, phosphorus, total suspended solids, and bacteria. All Development shall comply with these standards unless exempted as set forth in this subsection 70-739.

(a) *Exemptions for limited disturbances.* Development in which Land Disturbance, calculated cumulatively as of the Applicable Baseline Date, is less than the thresholds in Table 1 below is exempt from the standards in subsections 70-740 and 70-741, subject to paragraphs (1) and (2) below.

TABLE 1 THRESHOLDS FOR APPLICATION OF STORMWATER POLLUTANT REQUIREMENTS

| Project Location | Land Disturbance | |
|------------------|---------------------|-----------------------|
| | Limited Residential | Multifamily and Other |

| | | |
|-------------------|----------|----------------|
| Jordan Basin | 1 acre | 0.5 acre |
| Falls Basin | 0.5 acre | 12,000 sq. ft. |
| Lower Neuse Basin | 1 acre | 0.5 acre |

(1) *Common Plan of Development.* Development that is part of a Common Plan of Development shall be included in the calculation. If the applicable threshold set forth in Table 1 is exceeded, all other portions of the Common Plan are subject to the requirements of this Article;

(2) *Redevelopment and Existing Development; maintenance of treatment.* Redevelopment and Existing Development that are exempt under these thresholds must continue to maintain and reconstruct all SCMs in compliance with approved plans, prior ordinance requirements, and City Standards.

(b) *Other exemptions.* Additionally, Development is exempt if:

- A. it qualifies in its entirety as Existing Development; or
- B. it is located in the Downtown Area and does not increase impervious area over the Applicable Baseline Date; or
- C. it is undertaken by a state or federal entity. (*Note:* Review and approval by the state must be demonstrated); or
- D. it is a City transportation project in the Jordan basin.

Sec. 70-740. Required reductions for nutrients and TSS; alternatives; calculations

(a) *Nutrient Loading Limits.* Development not exempt under subsection 70-739 shall construct and implement SCMs so as to limit the post construction loading of nitrogen and phosphorus from the project area to the limits set forth in Table 2 below, or shall comply with an allowed alternative as set forth in (b) through (d) below. A portion of the reduction requirements for nitrogen and phosphorus may be met through off site measures or payments as set forth in 70-741.

TABLE 2 NUTRIENT EXPORT LOAD LIMITS

| Project Location | Export Limit lbs/acre/year | |
|-------------------|----------------------------|--------------|
| | Nitrogen | Phosphorus |
| Jordan Basin | 2.2 | 0.82 |
| Falls Basin | 2.2 | 0.33 |
| Lower Neuse Basin | 3.6 | not required |

(b) *Alternative percentage reduction option for Redevelopment that increases impervious area.* As an alternative to meeting the load reductions described in (a) above, Redevelopment not exempt under 70-739 that increases impervious area may reduce the pre-development nutrient load from the entire project site for nitrogen and phosphorus by the percentage shown in Table 3 below. The pre-development nutrient load is calculated as of the Applicable Baseline Date and load reductions already achieved shall be credited.

TABLE 3 PERCENTAGE REDUCTION OPTION FOR REDEVELOPMENT.

| Project Location | Percent Reduction from Pre-Dev Load | |
|------------------|-------------------------------------|-----|
| | N | P |
| Jordan | 35% | 5% |
| Falls | 40% | 77% |
| Lower Neuse | 30% | N/A |

(c) *Alternative percentage reduction option for Redevelopment that does not increase impervious area.* Redevelopment not exempt under 70-739 that is outside the Downtown Area and does not increase impervious area shall reduce pre-development nutrient load, calculated as of the Applicable Baseline Date, by 10% if reductions are achieved onsite, and by 15% if reductions cannot be entirely achieved onsite.

(d) *Alternative for low impact development in Falls basin.* Development in the Falls Basin will be considered compliant with the nutrient reduction obligations of this Section 70-740 if it demonstrates that it meets the post development hydrologic criteria set forth in Chapter 2 of the North Carolina Low Impact Development Guidebook dated June of 2009, as it may be amended from time to time.

(e) *TSS Reduction.* When the impervious percentage of a Development that increases impervious area equals or exceeds 16% in the Falls or Jordan Basins, or 24% in the Lower Neuse Basin, TSS removal is required as further described in this subsection (e). All impervious surfaces, as reasonably practical, must drain to an SCM that is designed to provide a minimum of 85% TSS removal and is sized to capture runoff from the first 1 inch of rainfall from all surfaces that drain to the SCM. These requirements are expanded, and/or modified as follows:

(1) *Piped Areas in Low Density Projects.* Projects that do not require construction of SCMs because their impervious percentage is less than that described in the paragraph above must treat TSS from stormwater runoff that is conveyed in non-vegetated conveyances, such as stormwater pipes, but excluding road and driveway crossings.

(2) *Overtreatment to address untreatable areas.* Where treatment for TSS is not reasonably practicable, as determined by the Department, such as when impervious areas include offsite transportation improvements or small noncontiguous areas at the edge of a project, additional

reductions of TSS may be required in treatable areas, such as overtreatment in other project areas or treatment of offsite runoff.

(f) *Calculations for Nutrient Loading and TSS Removal.* Pollutant loading calculations shall be made using City Stormwater Standards. All increases in impervious surfaces shall be included, including but not limited to internal and off-site transportation improvements. Approved methodologies for calculating pollutant loading shall be maintained in writing by the Public Works Department, and shall include those methodologies and calculations required to be used by the Division of Water Quality or DWQ-approved alternate methodologies.

(g) *Submittals.* An applicant shall submit pollutant loading calculations for the pre- and post-development conditions as part of its application for approval of a subdivision or site plan, utility permit, or construction drawings for a street or utility.

Sec. 70-741 On-site treatment requirements; offsite purchase and credit options; bacteria control.

(a) *On site nutrient treatment requirements.* Nitrogen and phosphorus reduction requirements may be met, in part, through offsite management measures or the purchase of nutrient credits. At a minimum, however, in the Jordan and Falls Basins a percentage of the required nitrogen and phosphorus reductions must be achieved through onsite treatment, in the amount shown in Table 4 below. In addition to meeting the percentage reductions below, in the Jordan and Lower Neuse Basins, nitrogen export load from the site must not exceed 6 lbs. per acre per year for Limited Residential, and 10 lbs per acre per year for Multifamily and Other. (*Note:* offsite credit purchases do not meet TSS removal requirements which must be met onsite.)

TABLE 4 ONSITE NUTRIENT TREATMENT REQUIREMENTS

| Project Location | Minimum Onsite Nutrient Treatment | |
|--|--|--|
| | Nitrogen | Phosphorus |
| Jordan - General | *40% of required reduction | *40% of required reduction |
| Falls - General | *50% of required reduction | *50% of required reduction |
| Falls and Jordan within Downtown Area | *30% of required reduction | *30% of required reduction |
| Falls and Jordan exceeding thresholds but with less than 1 acre land disturbance | *30% of required reduction | *30% of required reduction |
| Lower Neuse | No Percentage reductions apply, but the 6/10 nitrogen export limit described | No Percentage reductions apply, but the 6/10 nitrogen export limit described |

| | | |
|--|---------------------------------------|---------------------------------------|
| | in paragraph (a) above must be met | in paragraph (a) above must be met |
|--|---------------------------------------|---------------------------------------|

*The “required reduction” is the difference between the post development loading in pounds per acre per year multiplied by the site area in acres before treatment minus the loading target, in pounds per acre per year multiplied by the acres. The percentage shown in the chart above is applied to that difference and the resulting number is the amount in pounds/year of nutrient reduction that must be achieved onsite.

(b) *Offset Payments to state approved nutrient mitigation banks.* Development and Redevelopment shall have the option of purchasing nutrient credits from state-approved nutrient banks to partially offset nitrogen and/or phosphorus loads as allowed by State law and regulation, including but not limited to 15A NCAC 02B.0235, 15A NCAC 02B.0282, and 15A NCAC 02B.0240, as they may be amended from time to time. In the Jordan Basin, calculation of credits required shall reflect State approved delivery factors. The number of pounds for which credits are purchased shall be increased by 5% if the nutrient bank is not located in the City of Durham. The following additional requirements shall apply:

1. *Location of nutrient banks.* Development in the Falls Basin must use nutrient banks located in the upper Falls portion of the Falls Basin – the portion that is north and/or west of Highway 50. Development in the Jordan Basin must use nutrient banks located in the Upper New Hope arm of such basin, as defined in state regulations.
2. *Certification of Nutrient Bank Provider.* Offset credits may only be obtained from nutrient banks certified by the state.
3. *Utilization of NC Ecosystem Enhancement Program.* Credits may also be obtained from the NC Ecosystem Enhancement Program if such credits are available, and if applicable state requirements regarding utilization of private nutrient banks are first met.
4. *Certification of credits.* Credits purchased pursuant to this subsection (b) shall be verified by the State and proof of such verification that meets City requirements shall be presented prior to approval of a final plat, or if no plat is required, prior to issuance of the first building permit within the project, or such earlier deadline as may be required by City Stormwater Standards.

(c) *Combination with noncontiguous donor parcels.* Development that has met the onsite treatment requirement in Section 70-741 may include within the proposed Development noncontiguous properties (hereafter “donor parcels”) deemed beneficial to water quality by the Department and made available for nutrient reduction through an agreement recorded prior to October 1, 2011 that perpetually protects the donor parcels from development. Such parcels must meet the requirements detailed in the Public Works Operating Policy on the Review Criteria for Acceptance of Conservation Easements for Non-contiguous Donor Parcels. Use of donor parcels is also subject to the following additional restrictions:

- (1) The donor and receiving parcels must be within the same reservoir basin;
- (2) The donor parcels must be perpetually restricted from development though the recorded legal easement referenced above that can be enforced by the City or County of Durham;
- (3) Areas within the donor parcels that the Department has determined to be undevelopable such as areas within the floodway or within required 50 riparian foot stream buffers may not be used for credit;
- (4) The amount of credit shall be as determined by the Department through a legally binding agreement approved prior to October 1, 2011;
- (5) All purchases or commitments for use of donor parcels shall be made prior to October 1, 2015.

(d) *Bacteria removal; control of other identified Stormwater Pollutants.* All Development which constructs Stormwater Control Measures in order to comply with this Article and which is located in an area that is subject to a state approved Total Maximum Daily Load for bacteria shall be required to have at least one SCM for each stormwater discharge that is rated as medium or high for its ability to remove bacteria from stormwater. Ratings shall be those that appear in the most recent version of the NCDENR Stormwater SCM manual or as determined or approved by the Director. In addition, SCMs required to be constructed under this Article must also treat any other pollutant for which a Total Maximum Daily Load has been identified for the area within which the SCM is located.

Sec. 70-742. Design, construction, and completion of SCMs and stormwater conveyances.

The owner(s) and/or the developer(s) of any Development for which SCMs and/or Stormwater Conveyances have been approved, and persons or entities that have contracted to perform all or a part of an owner's or developer's obligations, shall be responsible for complying with the requirements set forth below.

(a) *Design.* Stormwater Facilities required by this Article shall be designed in accordance with City Stormwater Standards. Dams, as defined by the North Carolina Dam Safety Law, including but not limited to NCGS 143-215.23 *et seq.*, and associated state administrative codes, as they may be amended in the future, are subject to the above-cited state requirements. Stormwater Facilities that are not required by this Article shall be subject to applicable City Stormwater Standards.

(b) *Approvals for Stormwater Facilities.* Stormwater Facilities required under this Article or any other requirement of City Code or the Unified Development Ordinance shall be constructed in accordance with City Stormwater Standards. Plans for such work, and any other work that may be identified in City Stormwater Standards, shall be submitted to the Department

for review and approval on such timetable as required in City Stormwater Standards. City Stormwater Standards may require that permits be obtained for such work.

(c) *Construction plans, fees, maintenance, financial guarantees.* For a Development in which construction of one or more Stormwater Control Measures is required, the owner(s) and/or developer(s) must ensure compliance with (1) through (5) below prior to i) transfer of any ownership interest or any lot within the development; ii) issuance of a building permit for construction within the development; iii) issuance of a utility permit for the development; and iv) construction drawing approval for any infrastructure within the development:

- (1) Review and approval of the Stormwater Impact Analysis;
- (2) Review and approval of plans and specifications for the SCMs and Stormwater Conveyances within the development;
- (3) Payment of permit and review fees required by the Department;
- (4) Approval and recordation of an agreement and/or covenants that meet City Stormwater Standards and that provide, among other things, for the construction and long term maintenance, inspection, repair, and reconstruction of the SCMs in accordance with City Standards. In the case of residential development intended for home ownership, a homeowners' association shall be created prior to recordation of such agreement and covenants and shall be a necessary party to such agreement;
- (5) Provision of financial guarantees to ensure the long term maintenance, inspection, repair, and reconstruction of stormwater control measures in accordance with City Code Section 70-751, the Unified Development Ordinance, and City Stormwater Standards.

(d) *Completion of construction.* Construction of SCMs and stormwater conveyances shall be completed, and final inspection and as-built drawings submitted to and approved by the City, in accordance with timelines set forth in City Stormwater Standards, unless a performance guarantee to ensure completion is approved pursuant to (e) below.

(e) *Performance Guarantees.* The owner or developer of a Development in which the requirements of (d) above have not been completed shall provide a performance guarantee of a type as set forth in City Stormwater Standards. The amount provided shall be as set forth in City Stormwater Standards, or as determined by the Director, which shall at a minimum require that all direct and indirect costs of completion and compliance with City requirements be guaranteed. City Stormwater Standards shall also include deadlines for completion of facilities for which performance guarantees have been provided. Deadlines may be modified by the Director to better ensure the protection of the City and the public, or to address special circumstances. A performance guarantee provided under this subsection may be used for any purpose not otherwise prohibited by law or the specific terms of such guarantee.

(f) *Conditional Certificates; Reduction of Guarantees.* The City is authorized to issue conditional certificates of compliance for buildings for which stormwater guarantees have been provided and completion ensured consistent with City Stormwater Standards. In addition, City Stormwater Standards may allow for reduction of performance guarantees as approved by the Department as Stormwater Facilities are completed and requirements are met.

(g) *Obligation to complete facilities; City use of land.* The owner of property for which a stormwater facility has been approved as part of a Development, and any parties that have obligated themselves to construct such facilities under approved plans, permits, or agreements, are legally obligated to construct the facilities approved, or to pay for the construction of such facilities, if any land disturbing activity has occurred in the Development. An owner that applies for and receives approval to construct a stormwater facility in a Development agrees, without further written agreements or conditions, to allow the City and its agents to enter and construct such facilities and to a reasonable right of entry to such land for the City and its agents, without compensation for such entry or use, to construct facilities required under this Article. Such agreement applies to all properties within the Development that are conveyed by such owner, and to all persons or entities that utilize an approved plan requiring construction of a stormwater facility for further development. . This provision does not: i) require the City to take any action, acquire any property, or construct any facility; or ii) create any right or entitlement for any persons or entities other than the City; or iii) limit the City's ability to require other persons or entities not identified in this subsection (g) to construct stormwater facilities that have not been constructed; or iv) limit the City's ability to utilize any other authority it may have under law to recoup the cost of construction of stormwater facilities, including but not limited to authority to assess properties served by such facilities.

(h) *Rights under contracts.* The City is entitled to enforce any third party rights for the benefit of the public or itself that may be expressly or implicitly created in contracts for the design and construction of SCMs or Stormwater Conveyances. Contractors that have not performed in accordance with such contracts may be considered responsible parties under this Article.

Sec. 70-743 Inspection, Maintenance, Repair, and Reconstruction.

(a) *Private maintenance responsibility.* The inspection, maintenance, repair and reconstruction of Stormwater Control Measures and Stormwater Conveyances not located in city right of way shall be the responsibility of i) the owner of the property on which such SCMs and conveyances are located; and ii) any person or entity that has legally agreed to be responsible for the SCMs; and iii) the non-City properties served by the SCMs or conveyances, as determined by reference to site plans, plats, and construction drawings for the SCMs or conveyances.

(b) *Level of maintenance.* Every SCM and Stormwater Conveyances shall be maintained, repaired, and reconstructed so as to continue its functionality to the level for which it was designed for the control and/or conveyance of stormwater and for the treatment of Stormwater Pollutants. Maintenance, repair, and reconstruction shall be performed in compliance with City Stormwater Standards. Standards for maintenance include but are not limited to the specific operation and maintenance agreement that may exist for particular facilities on file with the City Public Works Department, and the most recent version of the "Owner's Maintenance Guide for Stormwater SCMs Constructed in the City of Durham."

(c) *Annual private inspection.* An annual inspection report that meets City Stormwater Standards shall be provided for each Stormwater Control Measure by the persons or entities responsible for such facility, identified in (a) above. The report shall be submitted on such

schedule as approved by the Department. In addition, such persons or entities shall maintain inspection and repair reports regarding the SCMs as required by City Stormwater Standards.

(d) *City right to inspect.* The City may inspect Stormwater Control Measures and Stormwater Conveyances located on private property. Inspection may include but is not limited to testing of structures, water, or vegetation as the City determines may be useful to determine the history or performance of the SCM or conveyance.

Sec. 70-744 Remedies for Violation

The following are considered a violation of this Article: noncompliance with any requirement of this Article or prior stormwater ordinances; noncompliance with City Stormwater Standards implementing this Article; and noncompliance with any approval, permit, or similar authorization granted pursuant to this Article. A violation of this Article is a violation of the City Code and is subject to all civil and criminal penalties allowed under law, in addition to those specifically set forth below. Persons and entities identified in Sec. 70-742 and 70-743(a) as responsible for compliance with this Article shall be responsible for any violation. Remedies are cumulative, and may be exercised separately, together, or in any order.

(a) *Withholding of Permits, Approvals, and Certificates of Occupancy/Compliance.* In the event of violation of this Article, the City may withhold any approval or permit for any development activity occurring on the property or in the development where the violation exists, including but not limited to withholding any permit or certificate of occupancy/compliance for any structure served by an actual or proposed SCM or stormwater conveyance that is in violation.

(b) *Stop work order.* The City may issue a stop work order to any person or entity performing work on property and/or in a development where there is a violation of this Article.

(c) *Injunction; Nuisance; Costs as Lien.* The City may institute an action in a court of competent jurisdiction for an injunction, order of abatement, or any other equitable remedy not prohibited by law to remediate a violation of this Article. The City may also maintain an action under GS 160A-193 to remedy a condition prejudicial to the public health and safety. Costs of correction sustained by the City may be assessed as a lien against property, as allowed by law.

(d) *Incorporation of 70-538 et seq.* In addition, all remedies and procedures set forth in Sections 70-538 through 70-542 of the City Code shall apply to violations of this Article whether or not such violations are also violations of City Code Section 70, Article V.

SECTION 2. This Ordinance shall be effective July 6, 2012 and shall replace the above-cited sections of the City Code.